141-260

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. ~~628.~~ 343-52 52

JOHN N. A. GRISWOLD, APPELLANT,

vs.

ROWLAND G. HAZARD, ROWLAND HAZARD, ANNA HAZARD, AND LYDIA TORRY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

FILED JUNE 22, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 628.

JOHN N. A. GRISWOLD, APPELLANT,

vs.

ROWLAND G. HAZARD, ROWLAND HAZARD, ANNA HAZARD, AND LYDIA TORRY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, APRIL 17, 1889.

1 *Bill in Equity.*

Circuit C't U. S., R. I. Distr. Eq. No. 2187.

JOHN N. A. GRISWOLD
vs.
ROWLAND G. HAZARD *et als.* } No. 3.

2 Be it remembered that on the 12th day of June, A. D. 1885, the following bill in equity was filed in the clerk's office of the United States circuit court for the first circuit and district of Rhode Island:

JOHN N. A. GRISWOLD *vs.* ROWLAND HAZARD *et al.*

3 *Bill of Complaint.*

To the judges of the circuit court of the United States for the district of Rhode Island:

John N. A. Griswold, of the city, county, and State of New York, and a citizen of the State of New York, brings this his bill against Rowland G. Hazard and Rowland Hazard, both of South Kingston, in the State of Rhode Island; Anna Hazard and Lydia Torrey, both of Newport, in the said State of Rhode Island, and all of whom are citizens of the said State of Rhode Island; and thereupon your orator complains and says that on the third day of March, 1883, the said defendants commenced an action at law against your orator in the supreme court of the State of Rhode Island to recover the penal sum mentioned in a certain writing obligatory, a copy of which is hereto annexed, marked Exhibit A, and hereby made a part hereof; which said suit was thereafter removed by your orator to the circuit court of the United States for the district of Rhode Island and is now pending therein; and your orator prays that all the proceedings had in said suit may be taken and considered as part of this bill.

Further complaining, your orator says that the suit in equity of Isaac P. Hazard and others against said Thomas C. Durant and others, mentioned in the said writing obligatory, is a certain suit in equity commenced by the said Isaac P. Hazard as a stockholder in the Credit Mobilier of America, a corporation incorporated under the laws of the State of Pennsylvania, in the supreme court of the State of Rhode Island, against the said Thomas C. Durant (to which the other obligees named in the said bond afterwards became parties complainant), alleging that the said Thomas C. Durant, while vice-president of the said Credit Mobilier of America and controlling its affairs, committed certain frauds upon the said corporation, and praying for an account of the same, to which suit in

4 equity the said corporation and others were made parties defendant, and for more accurate information concerning said suit in equity the original bill therein is hereto annexed, marked Exhibit B, and hereby made a part hereof.

Further complaining, your orator says that by the laws of the

State of Rhode Island a stockholder in a corporation could not maintain in the said supreme court of Rhode Island, either in equity or at law, in his own name, a suit founded on a right of action existing in the corporation itself and in which the corporation is the appropriate plaintiff, unless there exists as the foundation of the suit some action or threatened action of the managing board of directors or trustees of the corporation which is beyond the authority conferred on them by their charter or other source of organization, or such a fraudulent transaction, completed or contemplated, by the acting managers in connection with some other party or among themselves or with other shareholders as will result in serious injury to the corporation or to the interest of the other shareholders;

Or where the board of directors or a majority of them are acting for their own interest in a manner destructive of the corporation itself or of the rights of the other shareholders;

Or where the majority of shareholders themselves are oppressively and illegally pursuing a course in the name of the corporation which is in violation of the rights of the other shareholders and which can only be restrained by the aid of a court of equity;

Or unless the suit should be founded on a state of facts in which to prevent irremediable injury or a total failure of justice the said court would be justified in exercising its powers—

Whereas your orator asserts, on information and belief, that in the said suit in equity of Isaac P. Hazard and others against Thomas C. Durant and others no such foundation existed, nor did any such state of facts exist.

5 Further complaining, on information and belief, your orator says that before commencing said suit the said Isaac P. Hazard did not nor did any other stockholder of the said Credit Mobilier of America exhaust any of the means within his reach to obtain within the said corporation the redress of the grievances alleged in his said bill; that he did not make any effort, either with the managing body of the corporation or with the stockholders thereof as a body, to induce it or them to take remedial action against the said Thomas C. Durant, nor did he or any other stockholder of the said corporation show to the said supreme court of Rhode Island that he or any such stockholder had made any such efforts, or that such efforts were impossible and that it was unreasonable to require them.

Further complaining, your orator says that by the laws of the State of Rhode Island the said supreme court of Rhode Island had no jurisdiction over the said suit in equity of Isaac P. Hazard and others against Thomas C. Durant and others, unless the said Isaac P. Hazard or some other stockholder of the said Credit Mobilier of America had before commencing the said suit exhausted every effort within the said corporation to obtain the redress of the grievances alleged in the said bill.

And your orator avers and, on information and belief, complaining, says that before bringing said suit in equity in the supreme court of the State of Rhode Island neither the complainant, Isaac P. Hazard, nor any other of the stockholders of the said Credit Mo-

bilier of America requested the managing committee of the board of directors or the stockholders of said Credit Mobilier of America, in stockholders' meeting assembled, or the said Credit Mobilier of America at any meeting of said corporation, to begin legal or equitable proceedings or cause such proceedings to be begun in the name of the corporation against the said Durant before himself filing said bill in equity.

6 And your orator further shows that by the laws of the State of Rhode Island the said supreme court of Rhode Island had no jurisdiction in or over the subject-matter of the said suit in equity upon any ground, whether or not the same has been heretofore alleged herein.

Further complaining, your orator says that, notwithstanding the said want of jurisdiction in or over the subject-matter of the said suit in equity, the said supreme court of Rhode Island, at the instance of the said defendants, proceeded to make therein certain pretended orders and decrees, among which was the decree mentioned in the declaration in the said action at law pending against your orator as aforesaid, and that in the whole course of its proceedings in the said suit it did not permit the said Thomas C. Durant to be heard upon any question of fact touching its said jurisdiction, on the ground, as alleged by the said defendants, that he was in contempt of its authority for the violation of one of its said pretended orders or decrees; and your orator further shows that he has requested the said defendants to deliver up the said writing obligatory to be cancelled, and to abstain and desist from suing your orator at law to recover the penal sum thereof, with which just and reasonable requests the said complainant well hoped that the said defendants would have complied, as in justice and equity they ought to have done.

But now so it is, may it please your honors, the said defendants wholly neglect and fail so to do and pretend that the said writing obligatory binds your orator to the payment of the decree rendered in said suit in equity against said Thomas C. Durant to the extent of the penal sum of the said writing obligatory, and are urging their said suit at law upon the said writing obligatory against your orator; all of which actings and pretences of the said defendants are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator. In tender consideration whereof and forasmuch as your orator is without adequate remedy in the prem-

7 ises by the strict rules of the common law and without the assistance of this honorable court, where matters of this nature are particularly cognizable and relievable—

To the end, therefore, that the said defendants may answer the premises, and that the said bond may be delivered up to your orator to be cancelled; that the said Rowland Hazard, Rowland G. Hazard, Anna Hazard, and Lydia Torrey may be restrained by the writ of injunction of this court from further proceeding with the said action of law, now pending in this court, in which the said defendants are plaintiffs and your orator is defendant, and from enforcing the said writing obligatory in any manner, and that your orator may have

such other and further relief as to your honors may seem meet and the justice of this cause shall require—

May it please your honors to grant unto your orator, not only a writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said Rowland Hazard, Rowland G. Hazard, Anna Hazard, and Lydia Torrey to restrain them and each of them from further prosecuting the said action at law upon the said bond or in any manner enforcing the same, but also a writ of subpœna, to be directed to the said Rowland Hazard, Rowland G. Hazard, Anna Hazard, and Lydia Torrey, thereby commanding them and each of them, at a certain time and under a certain penalty, to appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises (their oaths thereto being hereby waived), and further to stand to, perform, and abide such further orders, directions, and decrees therein as to your honors shall seem meet.

And he will ever pray, etc.

JOHN N. A. GRISWOLD.

SAM'L R. HONEY,
Compl't's Sol'r.

8 STATE OF RHODE ISLAND, }
Newport, } *sc:*

On this — day of ——, 1885, before me personally appeared John N. A. Griswold and made oath that he has read the above bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein statedt o be on his information and belief, and except also as to conclusions of law, and as to those matters and conclusions he believes them to be true.

—— ——.

9 EXHIBIT "A."

Know all men that we, Thomas C. Durant, as principal, and John N. A. Griswold and S. Dexter Bradford, as sureties, are firmly bound to Isaac P. Hazard, Rowland Hazard, Rowland G. Hazard, Elizabeth Hazard, Elizabeth Hazard, tru-tee; Anna Hazard, Mary P. Hazard, Lydia Torrey, Sophia Vernon, and Anna Horner in the sum of fifty-three thousand seven hundred and thirty-five dollars, to be paid said obligees, their executors, administrators, or assigns; to which payment we bind ourselves, our several and respective heirs, executors, and administrators, jointly and severally, hereby.

Sealed with our seals and dated this 24th day of August, A. D. 1868.

The condition of this obligation is that said Thomas C. Durant shall on his part abide and perform the orders and decrees of the supreme court of the State of Rhode Island in the suit in equity of Isaac P. Hazard and others against said Thomas C. Durant and

others now pending in said court within and for the county of Newport.

THOMAS C. DURANT. [L. S.]
J. N. A. GRISWOLD. [L. S.]
S. D. BRADFORD. [L. S.]

Executed and delivered in presence of—
FRANCIS P. PECKHAM, JR.

Endorsed: Isaac P. Hazard *et als.* and Thomas C. Durant *et als.* *Ne exeat* bond. Filed Aug. 24, 1868. Thomas W. Wood, clerk.

10 EXHIBIT "B."

NEWPORT, *sc:*

Supreme Court. September Term, 1868.

ISAAC P. HAZARD *et al.*
vs.
THOMAS C. DURANT *et al.* } Bill in Equity, No. 2.

To the honorable justices of the supreme court of the State of Rhode Island within and for the county of Newport:

Isaac P. Hazard, of the city and county of Newport, in the State of Rhode Island, brings this his bill of complaint against Thomas C. Durant, Oliver Ames, Benjamin E. Bates, John Duff, Cornelius S. Bushnell, Sidney Dillon, Henry S. McComb, and "The Credit Mobilier of America," and "The Union Pacific Railroad Company."

And thereupon, humbly complaining for himself as one of the stockholders in the said defendant corporation, "The Credit Mobilier of America," as also for other such stockholders in said corporation as may become parties to this his bill of complaint, your orator says that the said defendant corporation, The Credit Mobilier of America, was created, under the laws of the State of Pennsylvania, for the purposes and with the powers fully set forth in its act of incorporation and other acts relating thereto, copies of which, marked Exhibit A, are hereto annexed and made part of this bill of complaint.

That the said defendant corporation, The Union Pacific Railroad Company, was created by acts of Congress for the purposes and
11 with the powers fully set forth therein, copies of which said acts, marked B, are hereto annexed and made part of this bill of complaint.

That your orator from August, 1865, was a stockholder in the Credit Mobilier of America aforesaid, and from April, 1866, in the Union Pacific Railroad Company aforesaid, and since said dates, respectively, was and still is a stockholder in each of said corporations, and now owns and holds shares in the said Credit Mobilier of America of the value at par of thirty-eight thousand dollars, and

shares in the said Union Pacific Railroad Company of the par value of —— dollars.

And your orator, further complaining, says that on the 16th day of August, 1867, the said defendant corporation, The Union Pacific Railroad Company, made a contract in writing with Oakes Ames, of North Easton, in the State of Massachusetts, for certain work to be done and material to be furnished in the construction of a large portion of its railroad and telegraph line at certain prices and on certain terms and conditions fully set forth in said contract, a copy of which, marked C, is hereto annexed and made part of this bill of complaint.

That on the 17th day of October, 1867, the said Oakes Ames, by an agreement in writing between himself, as party of the first part, the said Thomas C. Durant, Oliver Ames, John B. Alley, Sidney Dillon, Cornelius S. Bushnell, Henry S. McComb, and Benjamin E. Bates, of the second part, and the said Credit Mobilier of America, of the third part, assigned said contract with the said Union Pacific Railroad Company of August 16, 1867, to the said parties of the second part in trust for various purposes, and especially stipulating that the profits arising from said contract so assigned should be paid to the then stockholders of the said Credit Mobilier of America in proportion to the shares therein held by them, respectively, as fully set forth in said agreement or deed of trust, a copy of which, marked Exhibit D, is hereto annexed and made part of this bill of complaint.

12 And your orator avers that large profits, in addition to those before mentioned as made by said Credit Mobilier, have been made under and by virtue of said contract so assigned, and the same and portions thereof have been paid over to some or all of the stockholders in the said Credit Mobilier of America entitled to the same by the said parties of the second part named in said Exhibit D, or by such of them as continue to act as trustees, and the said defendant, John Duff, who has been substituted as trustee under said agreement or trust deed in place of John B. Alley, therein named, as your orator is informed and believes.

That your orator has received a share of said profits, and that, as he is informed and believes and therefore charges, the said defendant, Thomas C. Durant, has received from said trustee a large share of the profits arising from said contract, the same having been paid to him as a stockholder in the said Credit Mobilier of America holding a great number of shares therein, and that, as your orator is informed and believes and therefore charges, the said Thomas C. Durant has become and is now the holder and nominal owner of a large amount of the stock and bonds of the said Union Pacific Railroad Company transferred and delivered to him by the said trustees as and for a part of his share in the profits aforesaid.

And your orator, further complaining, says that the said defendant, Thomas C. Durant, was, from the early part of the year 1864 until May 18, 1867, the president of the said defendant corporation, The Credit Mobilier of America, and had to a great extent the management and control of its affairs and the confidence of the trustees

and directors thereof, and was able to direct and control its funds and finances, its payments and disbursements, and that the treasurer, clerks, and agents of said corporation were in the habit of paying and did pay as he directed any and all sums of money, and upon vouchers or without vouchers, as were by him ordered and directed.

13 And your orator further states that the said defendant, Thomas C. Durant, had no rightful power and authority to receive from the said corporation, its officers, agents, or servants, or to cause or direct to be paid by them, any sums of money as aforesaid, except for the use of the said corporation and to be applied in and about its legitimate business.

And your orator is informed and believes and therefore charges that the said Thomas C. Durant in all instances in procuring moneys from the said corporation, its treasurer, clerks, or agents, or in causing or procuring moneys to be paid by the said corporation, its treasurer or other officer or agent, whether to himself or to any other person, represented and pretended to the directors, officers, and agents of the said corporation that such moneys were required and were to be used and were used for the benefit of the said corporation and in and about its legitimate business, and that upon such representations, which were by the said corporation, its officers and agents, believed to be true, as your orator is informed and believes, he, the said defendant, Thomas C. Durant, did, between May, 1864, and January, 1868, receive and cause to be paid to himself and other persons on his orders and by his directions, of and from the funds and moneys of the said corporation, very large sums of money, amounting in the whole, as your orator believes and charges, to more than a quarter of a million dollars, which he deceitfully and fraudulently applied to his own uses and purposes.

And your orator further says that he is informed and believes that it appears by the books and records of the said corporation kept by its clerks and servants, and that in fact the said defendant, Thomas C. Durant, procured and caused to be paid to him and to others, for his use and benefit, by the officers and agents of the said corporation, and of and from its funds and moneys, the several sums of money specified in the schedule hereto annexed and marked

14 Exhibit E and made part of this bill, and at the dates and time therein mentioned, and that the said several sums of money hereinbefore mentioned were and each of them was so procured by the defendant, Thomas C. Durant, by means of his said office of president, and upon the false and fraudulent representations and pretence that the same had been by him paid for the benefit of said corporation or in the promotion of its business or the furtherance of its interest, or were required to be paid to and for the use of the said corporation or to some person or persons having just and legal claims and charges against the same for said amounts, respectively, and that each and all of said sums were required to be paid and were paid in and about the business of the said corporation and for its use and benefit; which representations, as your orator is informed and believes, were by the said corporation, its officers and

agents, believed to be true, whereas your orator is informed and believes and therefore charges that the said representations and pretences so by the said defendant, Thomas C. Durant, made as aforesaid were and each of them was false and unfounded, and known to be so by the said Thomas C. Durant, and that each and all said sums of money hereinbefore mentioned were so procured by him with intent to defraud the said corporation, your orator, and other stockholders therein and to convert the same to his own use, and that the same were by the said defendant, Thomas C. Durant, so converted and applied to his own use.

And your orator further charges, on information and belief, that the said defendant, Thomas C. Durant, has never rendered any account showing a proper disbursement of the moneys hereinbefore mentioned or any part thereof for the benefit of the said corporation or in and about its business, nor furnished the said corporation with any proper vouchers for said moneys or of the payments thereof in its said business, nor in any manner accounted for or
15 paid over the same or any part thereof, and that he is indebted to the said corporation in the full amount of all said moneys, with interest.

And your orator, further complaining, says that between October, 1864, and January, 1868, the said defendant, Thomas C. Durant, paid to the said corporation, the Credit Mobilier of America, and was credited on its books with large sums of money as paid upon his subscriptions to its capital stock or the subscriptions of other persons thereto transferred to him, and that large parcels of said stock have been by him transferred to or into the names of other persons upon the books of said corporation, and that, as your orator is informed and believes, there are now standing on the books aforesaid, in the name of the said Thomas C. Durant, 5,658 shares of said stock, of the par value of $565,800, for which he is credited upon said books with full payment therefor, and said stock is of the full actual value aforesaid, or very near to the said amount.

And your orator is informed and believes and therefore charges that a very large portion of said moneys so as aforesaid fraudulently converted or procured by the said defendant, Thomas C. Durant, as aforesaid, has been by him directly or indirectly appropriated and applied to the payments for said stock so by him held as aforesaid; and your orator is advised and therefore claims and insists that the said corporation and its stockholders have an equitable lien upon said stock of the said Thomas C. Durant to the amount of the moneys so by him fraudulently applied to payments therefor as aforesaid, and that the said stock and its proceeds are the rightful property of said corporation, the said Durant, an agent of said corporation, having, in breach of his trust, invested their moneys therein.

And your orator, further complaining, says that the said defendant, Thomas C. Durant, was active in promoting the organization of the said corporation, the Credit Mobilier of America, and
16 that on or about the 24th day of November, 1864, he presented to the officers and agents of the said corporation a claim for

forty-six thousand dollars as for so much money paid to one H. C. Crane for the expenses incident to such organization, and caused and procured himself to be credited upon the books of the said corporation with said amount, as your orator is informed and believes and therefore charges, in part payment of ninety-five per cent. on five hundred shares in the capital stock of said corporation, and the same was allowed to him by and in behalf of the said corporation as and for so much money paid thereto.

That the said Henry C. Crane was and ever since has been a confidential clerk in the employ of the said Thomas C. Durant; and your orator is informed and believes and therefore charges that no sum whatever was claimed by or paid to the said Henry C. Crane for any service or disbursements in and about the organization aforesaid, and that his name, if used in any way therein, was so used for the sole benefit of the said Thomas C. Durant and by way of cover and concealment of the connection of the said Thomas C. Durant with said transaction.

And your orator is further informed and believes that the whole expenses and disbursements connected with the said preliminary organization of the said corporation as aforesaid did not exceed the sum of sixteen thousand dollars, and that at least thirty thousand dollars of the amount so claimed by the said defendant, Thomas C. Durant, and credited and allowed to him as aforesaid was falsely and fraudulently claimed, and that, at most, he was entitled only to be credited with said sixteen thousand dollars, and that he is justly indebted to the said corporation in said sum of thirty thousand dollars, with interest thereon, and that the same is an equitable lien and charge upon the shares of the said Thomas C. Durant in the said corporation to that amount, and that stock of the amount of said thirty thousand dollars, with the dividends, income, and
17 profits upon and from stock since said pretended purchase by said Durant and which may hereafter accrue therefrom, are the rightful property of said corporation and of its stockholders.

And your orator, further complaining, says that prior to the organization of the said corporation as aforesaid and before it was capable of contracting with said corporation, the Union Pacific Railroad Company, and while its said organization was in contemplation, for the purpose of aiding in the construction of said company's railroad, your orator is informed and believes that the said Thomas C. Durant, consulting and professing to act in concert with others, who subsequently became members of and stockholders in the said corporation upon its organization being completed as aforesaid, and being then vice-president of and active in the management of said railroad company, caused and procured a contract to be made between the said Union Pacific Railroad Company and one Herbert M. Hoxie for the doing of certain work in and about the construction of said railroad, for the prices therein agreed to be paid therefor.

That the said Hoxie was but the instrument and agent of the said Thomas C. Durant and had no interest in said contract and no control over the same, and never did any work under the contract

or advanced any moneys therefor, but his name was used therein only as a cover and to conceal the connection of the said Durant with said transaction, he, the said Durant, representing at the time to his associates and the directors and stockholders of the Credit Mobilier of America aforesaid and assuring them that the said contract was in truth and in fact taken and held for the benefit of the said last-mentioned corporation, and to be assigned and transferred to such corporation when it should by organization under its charter become capable to accept and undertake the same.

18 That, as your orator is informed and believes, prior to March, 1865, when said contract was in form assigned to and assumed by the said corporation, the Credit Mobilier of America, there had not been to exceed one hundred thousand dollars expended thereon or earned under the same, and that said one hundred thousand dollars had been advanced and paid by the said corporation, its agents or stockholders, and in its behalf and for its benefit, and not by the said Hoxie or the said Durant.

That on or about the tenth day of May, 1865, the said Durant presented to said corporation a claim for four hundred and twenty thousand seven hundred and seventy dollars as and for so much money due and owing upon said contract to the said Hoxie for work done, materials furnished, and expenditures made prior to the assignment thereof as aforesaid; and did falsely and fraudulently represent and pretend to the officers and agents of said corporation that said amount was justly due for actual expenditure and for money actually earned upon and under said contract prior to said assignment; and did fraudulently cause and procure said sum to be credited to him, the said Durant, upon the books of the said corporation as paid by him on that day upon and in part payment for five thousand nine hundred shares of the capital stock of the said corporation; and said sum, without lawful authority and by the fraudulent act and procurement of the said Durant, was so credited and allowed to him as and for so much money paid upon his said stock, and he has had the full benefit thereof; and your orator claims and insists that the said Durant is justly indebted to the said corporation in the full amount of said sum, with interest thereon, and that the same is an equitable lien and charge upon the shares in the capital stock of the said corporation owned and held by him, and that the said stock so purchased by the said Durant, with all the earnings, dividends, and income, and rights thereof, is the rightful property of said corporation and of its stockholders.

19 And your orator, further complaining, says that on or about the 20th day of November, 1866, the said defendant Durant caused and procured to be paid by the said corporation, the Credit Mobilier of America, upon the drafts of one A. N. Gesner, sixty thousand dollars under the false and fraudulent pretence and representation that the said draft was drawn upon the said corporation for some claim or demand justly due and owing by the said corporation—

Whereas in truth and in fact, as your orator is informed and believes and therefore charges, said draft was not so drawn or

based on any legal claim, but was drawn and used, by direction and for the benefit of the said Durant, as a means whereby he might obtain that amount from the said corporation without consideration and to be used by him and applied to his own purposes in fraud of the said corporation and of your orator, and said sum was, in fact, received by the said Durant without consideration and by him applied in whole or part payment for his stock in the said corporation, and said sum was, on the day last aforesaid, by his fraudulent act and procurement, credited to his stock account on the books of the said corporation, and the said Durant has had the full benefit thereof; and your orator claims and insists that the said Durant is justly indebted to the said corporation in the amount aforesaid, with interest thereon, and that the same is an equitable lien and charge upon the stock by him held in the said corporation, and that the stock purchased with said money, with all the earnings, dividends, income, and rights thereto appertaining or which have been or may be derived therefrom, are the rightful property of said corporation and of its stockholders.

And your orator, further complaining, says that he is informed and believes and therefore charges that the pecuniary condition of the said defendant Durant is precarious; that he is and for a long time has been largely engaged in hazardous speculations and financial operations, and has sustained very heavy losses and is liable to sustain other losses, and your orator is fearful that any recovery had against him could not be collected by execution or other ordinary process of law, and that the said Durant is about to depart out of the State and out of the jurisdiction of this court; that the said corporation, the Credit Mobilier of America, has earned and divided among its stockholders large dividends upon the shares in its capital stock held and owned by them, respectively, said dividends having been payable and actually paid in money and in stock and bonds of the said corporation, the Union Pacific Railroad Company, large amounts of which have been assigned to the said defendant Durant as and for his share of dividends and earnings upon the stock so as aforesaid held and owned by him in the said Credit Mobilier of America, and that he has received bonds of the said Union Pacific Railroad Company as and for such dividends to a very large amount, exceeding, as your orator is informed and believes, seven hundred thousand dollars, and has also received as and for such dividends stock of the said Union Pacific Railroad Company to the amount of nearly two million dollars, a large amount of which said stock is now standing in the name of the said Durant on the books of the said last-named corporation.

And your orator claims and insists that the said corporation, the Credit Mobilier of America, and your orator and others, stockholders therein, have an equitable lien and charge upon said stock and bonds so issued to the said Durant as and for dividends as aforesaid, for any amount which may be found due from him to them, or either of them, or to the said corporation, for or in respect to the causes of action mentioned in this bill of complaint, and that such lien should be enforced by decree of this honorable court, and that

the said Durant should be directed to assign and convey to
21 said corporation all stock, bonds, and money heretofore received by him as the proceeds of said stock so purchased by him with the proper moneys of said corporation.

And your orator further claims and insists that each and all said sums of money, shares, and stock and bonds as aforesaid are justly due and belong to the said corporation, the Credit Mobilier of America, and to your orator and others, stockholders therein, and that the said defendant, Durant, is justly indebted to the said corporation and to your orator and others, stockholders therein, in the full amount of said sum and value of said shares, stock, and bonds, and that the same are an equitable lien and charge upon said contract and agreement in the hands of the said defendants, trustees as aforesaid, and the shares, bonds, and dividends and earnings received or to be received thereon or therefrom by the said trustees to the extent of the interest of the said defendant, Durant, therein, as hereinbefore fully stated and charged, and that the interest of said Durant in said agreement and trust deed and in the proceeds therefrom, so far as they purport to belong to or to be payable to the said Durant, are the rightful property of the said corporation and of its stockholders.

And your orator had well hoped that the said defendant corporation, The Credit Mobilier of America, would protect the rights and interest of its stockholders in the premises and, by proper proceedings at law or in equity, compel the said defendant, Thomas C. Durant, to account for said moneys wrongfully and fraudulently converted to his own use and withheld from said company as aforesaid, and that he would account for and pay over the same, and that said corporation would compel the said Durant to transfer all stock, bonds, moneys, and other rights and interest aforesaid procured with and by the proper moneys of said corporation to the same and to its stockholders; but now so it is, may it please your honors, that

the said defendants, though requested so to do, have wholly
22 neglected and refused to comply with these reasonable expectations and requests of your orator; all of which actings, doings, and pretenses of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator in the premises. In consideration whereof, and forasmuch as your orator is entirely remediless according to the rules of the common law, and can only have relief in a court of equity—

To the end, therefore, that the said defendants may, upon their several and respective corporal oaths, full, true, direct, and perfect answers make, the complainants hereby waiving said Durant's oath thereto, to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were here repeated and they thereunto distinctly interrogated, and that not only as to their knowledge and remembrance, but also as to the best of their knowledge, information, and belief;

And that the said defendant, Thomas C. Durant, may come to a fair and just account with the said defendant corporation, The

Credit Mobilier of America, and with your orator of and concerning all and singular the sums of money, stock and shares in capital stock, and bonds as aforesaid paid and delivered to or had or received by him as hereinbefore stated and charged, and may be decreed to pay over and deliver to the said Credit Mobilier of America and to your orator such sums of money, stock, and shares and bonds as aforesaid as by such account shall appear to be justly due or belonging to the said corporation or to your orator, and to make such transfer of such shares and bonds as aforesaid as shall be necessary in order to fully protect the rights of the said corporation and of your orator in the premises;

And that the amounts so ascertained to be due as aforesaid be adjudged and decreed to be a lien and charge upon the shares in the capital stock of each of said corporations owned or held by or
23 standing in the name of the said Durant on the books of said corporations, respectively, and upon the contract assigned as aforesaid to the said defendants, trustees as aforesaid, and the dividends, earnings, stocks, and bonds received under the same, or to be received by virtue thereof to the extent of the shares thereof to which the said Durant may be entitled under said assignment; and that on default in the payment and delivery of the moneys, stock, and bonds so found due as aforesaid all such stock and bonds be sold under the direction of this honorable court, or otherwise transferred to and apportioned among the rightful owners and claimants thereof according to equity and good conscience; and that such stock, bonds, and moneys and interest and rights so procured by said Durant with the moneys of said corporation shall be deemed and taken to be the rightful property of said corporation; and that the said defendant, Durant, his agents and servants, be restrained from selling, assigning, transferring, pledging, or otherwise encumbering any stock or bonds in either of the said corporations owned or held by him or standing in his name on the books of either corporation, or received or held by the said defendants, trustees as aforesaid, for his use, or to be so received or held, or any right or interest in the contract assigned to said trustees as aforesaid, or any dividends on such stocks or bonds, whether in money, shares, or bonds or otherwise;

And that said Thomas C. Durant be enjoined from receiving or disposing of any dividends now or hereafter declared upon said shares of stock, and that the said defendant corporations be enjoined from paying over or delivering said dividends upon said shares of stock to said Thomas C. Durant, or upon his request, until the further order of this honorable court, whether said dividends be money, bonds, or stock or property of any kind;

And that the said defendant, Durant, be restrained from departing out of the State and out of the jurisdiction of the honorable court by writ of *ne exeat*, issued under the seal and by the order of this honorable court;

24 And that the said defendant corporations, their officers, agents, and servants, be restrained from suffering or permitting any shares or bonds so owned or held by or standing on the

books of said corporations, respectively, in the name of the said Durant to be assigned, transferred, pledged, or otherwise encumbered, or any dividends to be paid thereon, whether in money, stock, or bonds or otherwise;

And that said defendants, trustees as aforesaid, be restrained from paying or delivering to or upon the order of the said Durant any dividends, earnings, shares, stock, or bonds by them held or to be held or received under the contract aforesaid assigned to them, or any pledge, transfer, or encumbrance of the same or any part thereof, or of any interest therein belonging to the said Durant or to which he may be or become entitled;

And that your orator may have such further or other relief as the nature of his case may require and to your honors shall seem meet—

May it please your honors to grant unto your orator the writ of injunction of this honorable court, directed to the said defendants, commanding the said Durant, his agents and servants, to refrain from selling, assigning, transferring, pledging, or otherwise encumbering any stock or bonds of either of said corporations owned or held by him or standing in his name on the books of said corporations, respectively, or received or held or to be received or held by the said defendants, trustees as aforesaid, for his use, or any interest in the contract assigned to them by Oakes Ames as aforesaid, and from receiving any dividends thereon, whether in money, stock, or bonds or otherwise, to which he may be or may become entitled; and also commanding the said corporations, their officers, agents, and servants, to refrain from suffering any assignment, transfer, pledge, or other encumbrance of the stock or bonds of the said Durant as aforesaid, and from the payment of any dividends as aforesaid; and further commanding the said defendants, trustees as aforesaid, to refrain from paying or delivering to or by order of the said Durant any dividends, earnings, stock, or bonds received or to be received under said Oakes Ames contract, or permitting any interest therein belonging to the said Durant or to which he may become entitled to be assigned or otherwise disposed of.

And also to grant unto your orator the writ of subpœna of this honorable court, directed to the said defendants, Thomas C. Durant, of Newport; Oliver Ames, of North Easton; Benjamin E. Bates and John Duff, of Boston, in the State of Massachusetts; Cornelius S. Bushnell, of New Haven, in the State of Connecticut; Sidney Dillon, of the city, county, and State of New York; Henry S. McComb, of Wilmington, in the State of Delaware, and the said Thomas C. Durant, trustees as hereinbefore stated; the Credit Mobilier of America, a corporation created under the laws of the State of Pennsylvania, and having a place of business in Philadelphia, in said State, and also in said New York; and the Union Pacific Railroad Company, a corporation created by acts of Congress, and having a place of business in said New York; and Rowland G. Hazard, of South Kingston, in Rhode Island, commanding them on a certain day to be and appear before this honorable court, then

and there to answer the premises, and to stand to, perform, and abide such decree and order therein as to your honors shall seem meet.

ISAAC PEACE HAZARD.

NEWPORT, *sc:*

NEWPORT, *August* 22, 1868.

Then came the above-named Isaac P. Hazard and affirmed (on peril of the penalty of perjury) that the statements contained in the foregoing bill are true, and that those statements therein made on knowledge and belief are true to his best knowledge and belief.

Before me— FRANCIS B. PECKHAM, JR.,
Justice of the Peace.

26 *Motion for Leave to Amend Bill. Filed Feb'y* 23, 1881.

The complainant comes and moves for leave to amend his bill of complaint herein by inserting, on page 6 thereof, between the fourth and fifth lines, the following paragraph:

"And your orator shows unto your honors that, in so far as the said suit in equity of Isaac P. Hazard and others against the said Thomas C. Durant and others assumed to be a suit in behalf of the stockholders of the Credit Mobilier of America, the said supreme court of Rhode Island has no jurisdiction of the parties and subject-matter involved therein necessary to enable it to enter any decrees as prayed for, in that the said Credit Mobilier of America was and is a corporation created solely by the laws of the State of Pennsylvania, and that the said supreme court of Rhode Island had no jurisdiction over the internal affairs of a corporation created in a sover-ignty other than the State of Rhode Island for the purpose prayed for in the said suit in equity."

By his solicitors, SAMUEL R. HONEY.
ARNOLD GREENE.

27 *Decree.*

On motion for leave to amend bill.

In the above-entitled cause it is, on this 23d day of March, A. D. 1886, on motion of the complainant, ordered, adjudged, and decreed that the motion of the complainant heretofore made to amend the bill of complaint be granted, and that the bill of complaint be amended, as of the date when it was filed, by inserting, on page 6, between the 4th and 5th lines, the following:

"And your orator shows unto your honors that, in so far as the said suit in equity of Isaac P. Hazard and others against Thomas C. Durant and others assumed to be a suit in behalf of the stockholders of the Credit Mobilier of America, the said supreme court of Rhode Island had no jurisdiction of the parties and subject-matter involved therein necessary to enable it to enter any decrees as prayed for, in that the said Credit Mobilier of America was and is a corporation created solely by the laws of the State of Pennsylvania, and that the said supreme court of Rhode Island had no

jurisdiction over the internal affairs of a corporation created
28 in a sover-ignty other than the State of Rhode Island for the purposes prayed for in the said suit in equity."

By the court:

HENRY PITMAN, *Clerk.*

29 2137.

Demurrer. Filed Oct. 5th, 1885.

These respondents by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, do demur thereto, and for causes of demurrer show—

1. That it appears in and by said bill, and by the records therein referred to and made a part thereof, that the supreme court of Rhode Island, being a court of general equity jurisdiction, had and took full jurisdiction of the subject-matter of said suit in equity of Isaac P. Hazard and others against Thomas C. Durant and others, and of the parties to said suit, and particularly had full and final jurisdiction as to the question whether or not the averments in the bill of complaint in said suit were sufficient to entitle the complainants therein to have and maintain said bill and to a decree according to the prayer thereof; and that it doth further appear as aforesaid that said question was considered, adjudged, and determined in said case, and that it was finally adjudged and determined by said court that the averments in said bill were sufficient, notwith-
30 standing the objections of the defendants thereto, and that the complainants were entitled to said decree; and that it doth further appear as aforesaid that said decree of the supreme court of Rhode Island was the decree of a court having full jurisdiction of the subject-matter and of the said parties, and that said decree was and is a valid and binding decree as against all parties thereto.

2. That it appears in and by said bill, and by the records therein referred to and made a part thereof, that in said suit at law (referred to in said bill) the said defendant in his fourth original plea, and again in his fourth amended plea, set up (as he now does in said bill) that said decree of the supreme court of Rhode Island was null and void because said court had no jurisdiction over the subject-matter of said decree, and particularly because the averments in said bill were insufficient to entitle the complainants therein to maintain said bill as stockholders or to give said supreme court of Rhode Island any jurisdiction whatever except to dismiss said bill; and that it doth further appear by said bill, and by the records annexed to and made a part thereof, that this court did hear and pass upon the sufficiency of said pleas and did adjudicate and finally determine as between these parties that said decree of the supreme court of Rhode Island was valid and binding and could not be impeached for the reasons set forth in said pleas, being the same reasons set forth in the bill in the present suit, and that said pleas were not sufficient in law; and that it doth further appear as afore-

said that the said adjudication and determination of this court in said suit at law is final and conclusive against said complainant as to his right to maintain his said bill.

3. That the relief sought by said bill can only be had in this court by an order and decree annulling the judgment and decree of the supreme court of Rhode Island against a party who had appeared in obedience to its process and made defence to the suit in which such decree was so entered, and over the subject-matter of which it also had full jurisdiction, as appears in and by said bill.

4. That said complainant has not in and by said bill made or stated such a case as does or ought to entitle him to any such relief as is thereby sought and prayed for from and against these respondents, or to any relief whatever against these respondents.

31 Wherefore, and for divers other good causes of demurrer appearing in said bill, these respondents do demur thereto and to all the matters and things contained therein, and respectively demand the judgment of this court whether they shall be compelled to make any other or further answer to the same, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

ROWLAND HAZARD.
R. G. HAZARD.

The undersigned, of counsel for the respondents in said cause, certifies that in his opinion the foregoing demurrer is well founded in point of law.

EDWIN METCALF.

The respondents in said cause, on affirmation, say that the foregoing demurrer is not interposed for delay.

ROWLAND HAZARD.
R. G. HAZARD.

Affirmed to Sept'r 21, '85, before Jno. A. Brown, notary public, South Kingston.

32 # 2137.

Opinion of the Court. Filed Sept. 10, 1886.

(Heard by Colt and Carpenter, JJ.)

CARPENTER, *J.*:

The respondent in this case, on March 3, 1883, commenced in the supreme court of the State of Rhode Island an action of debt on a bond, dated August 24, 1868, and executed by Thomas C. Durant, as principal, and the complainant and S. Dexter Bradford, as sureties, binding them jointly and severally to Rowland G. Hazard and others in the sum of $53,735, the condition of which is that Durant "shall on his part abide and perform the orders and decrees of the supreme court of the State of Rhode Island in the suit in equity of Isaac P. Hazard and others against Thomas C. Durant and others, now pend-

ing in said court within and for the county of Newport." The breach assigned in the declaration is that Durant has not performed a decree by which that court, on December, 2, 1882, ordered him to pay into its registry the sum of $16,071,659.97. After oyer prayed and granted the complainant filed 10 pleas in bar, and the case was removed on his petition into this court, where the respondents filed special demurrers to five of the pleas. These demurrers were
33 sustained in Hazard *vs.* Griswold, 21 Fed. Rep., 178.

The complainant now brings this bill in aid of his defence to that action. He sets out all the proceedings in the case of Hazard *vs.* Durant in the supreme court of Rhode Island, and in support of his prayer for an injunction he makes the following allegations:

Further complaining, your orator says that by the laws of the State of Rhode Island a stockholder in a corporation could not maintain in the said supreme court of Rhode Island, either in equity or at law, in his own name, a suit founded on a right of action existing in the corporation itself and in which the corporation is the appropriate plaintiff, unless there exists as the foundation of the suit some action or threatened action of the managing board of directors or trustees of the corporation which is beyond the authority conferred on them by their charter or other source of organization, or such a fraudulent transaction, completed or contemplated, by the acting managers in connection with some other party or among themselves or with other shareholders as will result in serious injury to the corporation or to the interest of the other shareholders;

Or where the board of directors or a majority of them are acting for their own interest in a manner destructive of the corporation itself or of the rights of the other shareholders;

Or where the majority of shareholders themselves are oppressively and illegally pursuing a course in the name of the corporation which is in violation of the rights of the other shareholders and which can only be restrained by the aid of a court of equity;

Or unless the suit should be founded on a state of facts in which, to prevent irremediable injury or a total failure of justice, the said court would be justified in exercising its powers—

Whereas your orator asserts, on information and belief, that in the said suit in equity of Isaac P. Hazard and others against Thomas C. Durant and others no such foundation existed, nor did any such state of facts exist.

34 Further complaining, on information and belief, your orator says that before commencing said suit the said Isaac P. Hazard did not, nor did any other stockholder of the said Credit Mobilier of America, exhaust any of the means within his reach to obtain within the said corporation the redress of the grievances alleged in his said bill; that he did not make any effort, either with the managing body of the corporation or with the stockholders thereof as a body, to induce it or them to take remedial action against the said Thomas C. Durant, nor did he or any other stockholder of the said corporation show to the said supreme court of Rhode Island that he or any such stockholder had made any such

efforts or that such efforts were impossible and that it was unreasonable to require them.

Further complaining, your orator says that by the laws of the State of Rhode Island the said supreme court of Rhode Island had no jurisdiction over the said suit in equity of Isaac P. Hazard and others against Thomas C. Durant and others, unless the said Isaac P. Hazard or some other stockholder of the said Credit Mobilier of America had, before commencing the said suit, exhausted every effort within the said corporation to obtain the redress of the grievances alleged in the said bill.

And your orator avers and, on information and belief, complaining, says that before bringing said suit in equity in the supreme court of the State of Rhode Island neither the complainant, Isaac P. Hazard, nor any other of the stockholders of the said Credit Mobilier of America requested the managing committee or the board of directors or the stockholders of said Credit Mobilier of America, in stockholders' meeting assembled, or the said Credit Mobilier of America at any meeting of said corporation, to begin legal or equitable proceedings or cause such proceedings to be begun in the name of the corporation against the said Durant before himself filing said bill in equity.

And your orator further shows that by the laws of the State of Rhode Island the said supreme court of Rhode Island had no jurisdiction in or over the subject-matter of the said suit in equity upon any ground, whether or not the same has been heretofore alleged herein.

35 We do not think the bill can be sustained by the general allegation of want of jurisdiction, and the particular allegations above quoted do not, we think, amount to a denial of jurisdiction. The reasoning of Hazard *vs.* Griswold, *ubi supra*, is directly in point. Doubtless it was necessary for the supreme court, before proceeding to a decree, to find some unlawful act on the part of the corporation or its officers or stockholders and a certain request or demand on the part of the complaining stockholder for redress of his grievance. So, too, it was necessary to find other facts alleged in the bill, especially the fact that the respondent was indebted to the corporation. But to deny the existence of any of these facts is not to allege want of jurisdiction over the whole subject.

The allegations of the bill deny only the existence of the facts required to justify the stockholders in invoking the exercise of that jurisdiction. Since the supreme court is a court of general equity jurisdiction, and since it does not appear that Durant was not served with process within the jurisdiction of that court, we find no allegation in the bill of want of jurisdiction in the court which entered the decree here sought to be impeached.

As in the case of Hazard *vs.* Griswold, we express no opinion on the question whether want of jurisdiction of the former

36 suit on any ground could be set up in defence to an action on the bond.

The demurrer will be sustained.

37 *Final Decree. Entered Oct. 28th, 1886.*

This cause came on to be heard upon demurrer to the bill of complaint therein and was argued by counsel, and thereupon, on consideration thereof—

It is ordered, adjudged, and decreed that the said demurrer be sustained, and that the said bill of complaint be dismissed, and that the respondents recover their costs of the complainant, to be taxed by the clerk.

By the court:

HENRY PITMAN, *Clerk.*

From which decree, on the 30th day of October, A. D. 1886, the complainant's counsel came into court and claimed an appeal to the Supreme Court of the United States at its next session; bond ordered to be filed within thirty days.

HENRY PITMAN, *Clerk.*

38 *Claim of Appeal. Filed Nov'r 11th, 1886.*

The complainant in the above case, believing himself aggrieved by the final decree entered therein October 28th, 1886, and from which decree he, at the same term of said court, on the 30th day of October, 1886, claimed an appeal in open court, prays that his appeal be allowed, and that a transcript of the record, proceedings, and pleadings in said cause, duly authenticated, be sent to the Supreme Court.

By his solicitor, ARNOLD GREENE.

Allowed:

LE BARON B. COLT,
Circuit Judge.

Appeal Bond. Filed Nov'r 11th, 1886.

Know all men by these presents that we, John N. A. Griswold, of the city of New York and State of New York, as principal, and Samuel R. Honey, of the city of Newport and State of
39 Rhode Island, and Edwin S. Burdick, of the city of Newport, and State of Rhode Island, as sureties, are held and firmly bound unto Rowland G. Hazard and Rowland Hazard, both of South Kingston, in the State of Rhode Island, and Anna Hazard and Lydia Torry, both of Newport, in the State of Rhode Island, in the sum of five hundred dollars, to be paid to the said Rowland G. and Rowland and Anna and Lydia, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and *h*our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this eighth day of November, anno Domini eighteen hundred and eighty-six.

Whereas, at a circuit court of the United States holden at Provi-

dence, within and for the district of Rhode Island, by adjournment, on the 28th day of October, A. D. 1886, on a bill in equity depending in said court, wherein the said John N. A. Griswold was complainant and the said Rowland G. Hazard, Rowland Hazard, Anna Hazard, and Lydia Torry were respondents, which bill in equity was docketed in said circuit court as No. 2137, a decree was rendered against the said John N. A. Griswold dismissing his bill of
40 complaint, and the said John N. A. Griswold has appealed in open court from said decree to the Supreme Court of the United States, to be holden at Washington on the second Monday of October next after the date hereof:

Now, the condition of this obligation is such that if said John N. A. Griswold shall prosecute said appeal with effect and answer all costs if he fail to make his plea good, the above obligation shall be void; otherwise shall remain in full force.

J. N. A. GRISWOLD. [SEAL.]
SAM'L R. HONEY. [SEAL.]
EDWIN S. BURDICK. [SEAL.]

Signed & sealed in presence of—
CHARLES H. KOHNE, JR.

Approved:
LE BARON B. COLT,
Circuit Judge.

STATE OF RHODE ISLAND, } *ss:*
Newport, }

We, Samuel R. Honey & Edwin S. Burdick, who are mentioned in the foregoing obligation as sureties thereon, being severally duly sworn, on oath depose & say that we are severally possessed of estate & property of the value of fifteen hundred dollars over and above the liabilities of each of us.

SAM'L R. HONEY.
EDWIN S. BURDICK.

Sworn & subscribed to this 10th day of November, 1886.
WALTER P. SIMMONS,
Notary Public.

41 UNITED STATES OF AMERICA, } *ss:*
District of Rhode Island, }

CLERK'S OFFICE, U. S. CIRCUIT COURT,
AT PROVIDENCE, *March 4th*, 1887.

I, Henry Pitman, clerk of said court for said district, do hereby certify that the foregoing forty pages contain a true transcript of the record of the cause in equity, No. 2137, John N. A. Griswold *vs.* Rowland G. Hazard *et al.*, and of all of the proceedings therein.

Seal of Circuit Court, Rhode Island.

In testimony whereof I have hereunto set the seal of said court and my hand on the day and year above written.

HENRY PITMAN, *Clerk.*

42 The United States of America to Rowland G. Hazard, Rowland Hazard, Anna Hazard, and Lydia Torry, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of March next, pursuant to a claim and allowance of appeal filed in the clerk's office of the circuit court of the United States for the district of Rhode Island, wherein John N. A. Griswold is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said claim of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Horace Gray, associate justice of the Supreme Court of the United States, this thirteenth day of December, in the year of our Lord one thousand eight hundred and eighty-seven.

HORACE GRAY,
Justice S. C. U. S.

43 The appellees aforesaid acknowledge legal service of this citation.

By their solicitor, EDWIN METCALF.

Providence, R. I., December 27, 1887.

[Endorsed:] Sup. Court U. S. 1887, Oct. term. No. 965. Jno N. A. Griswold, app't, *vs.* Rowland G. Hazard & *al.* Citation and admission of service.

[Stamped:] Office Supreme Court U. S. Filed Jan. 3, 1888. James H. McKenney, clerk.

On this — day of ——, in the year of our Lord one thousand eight hundred and eighty-—, personally appeared —— —— before me, the subscriber, —— ——, and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed the — ——, A. D. 188–.

—— ——.

Endorsed on cover: Rhode Island C. C. U. S. No. 628. John N. A. Griswold, appellant, *vs.* Rowland G. Hazard, Rowland Hazard, Anna Hazard, and Lydia Torry. Filed June 22, 1887.

Office Supreme Court U. S.
FILED.
APR 1 1891
JAMES H. McKENNEY
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 52

JOHN N. A. GRISWOLD, *Appellant*,

v.

ROWLAND G. HAZARD *et al.*

BRIEF FOR RESPONDENTS.

STATEMENT.

This is a bill in equity brought by Griswold, in United States Circuit Court, Rhode Island, against Rowland G. Hazard and others, setting forth that the present respondents had brought a suit at law against him, in the Supreme Court of the State of Rhode Island, to recover the penal sum mentioned in the bond Exhibit A, referred to in the preceding case and subsequently removed to this court, and setting forth the suit in equity of Hazand and others against Durant and others in the Supreme Court of Rhode Island, wherein the decree was rendered against Durant, upon which said suit at law was based, and averring that said suit in equity was brought by a minority of stockholders of the Credit Mobilier Company, and that said bill did not contain averments sufficient to justify a bill by a minority of stockholders, and that therefore, the Court had no jurisdiction of the subject matter thereof; that, notwithstanding said want of jurisdiction, the Supreme Court of Rhode Island proceeded to render the decree mentioned in the declaration in the said action at law.

By an amendment (Record, page 15), the bill also set up want of jurisdiction, because the said Credit Mobilier of America was a corporation created solely by the laws of the State of Pennsylvania, and praying that said bond might be delivered up to Griswold, and that the plaintiffs in said suit at law might be enjoined from prosecuting the same.

To this bill the respondents demurred, for the following reasons: —

First. That the Supreme Court of Rhode Island, being a court of general equity jurisdiction, as such took and had jurisdiction of the subject matter of said suit, and of the parties, and particularly of the question whether or not the bill contained averments sufficient to entitle the plaintiffs to the relief prayed for therein, and heard and determined that question, and that such decree was a decree of a court having full jurisdiction as aforesaid, and was binding upon all the parties herein.

Second. That the allegation of want of jurisdiction in said Rhode Island Supreme Court, and the consequent invalidity of the decree of that court, had been raised, passed upon, and definitely settled by the United States Circuit Court in the action at law brought upon said bond and referred to and made a part of this bill, and that such determination by the United States Circuit Court, sitting at law, was final and conclusive as against the complainant in this bill, who was the defendant in said suit at law.

Third. That the relief sought by this bill could only be granted by annulling the judgment and decree of the Supreme Court of Rhode Island against the party who had appeared in obedience to its process and made defence to the suit, over the subject matter of which it had full jurisdiction.

Fourth. That the bill stated no ground whatever for relief.

Upon argument, the demurrer was sustained and the bill

was dismissed. The opinion of the Court, Colt and Carpenter, JJ., is in the Record, p. 17.

BILL WITHOUT EQUITY.

This bill is without any equity, and the demurrer thereto should be sustained, for the following reasons: —

1. The only ground for relief stated in this bill is that the court which rendered the decree which this bill seeks to avoid had no jurisdiction, and therefore such decree was and is void. If this decree is invalid for the reason alleged, viz., want of jurisdiction in the court which rendered it, that constitutes and constituted a complete defence to said decree in the action at law, and there was no occasion whatever for resorting to the aid of a court of equity. See cases to this point in brief in case No. , p. 3.

2. This complainant did set up this very defence in the suit at law in his fourth plea, and said plea was overruled, and therefore: —

The precise defence attempted to be set up by this bill to said decree was passed upon and decided in the action at law between these same parties, and that decision was and is final and conclusive. See cases referred to in brief of these respondents in Griswold *v.* Hazard, No. , p. 5.

3. The reasons in support of the decision of Mr. Justice Gray overruling said *fourth plea* are fully set forth in the brief of the respondents in the case No. , Griswold, Plaintiff in Error, *v.* These Respondents, pages 8 to 11, and the respondents respectfully refer thereto.

4. The precise question whether the bill in the Rhode Island suit contained sufficient allegations to justify the court in taking jurisdiction of the subject matter was raised and settled by that court in that suit, and that decision was conclusive upon the parties and their privies.

The question whether the averments in the bill were suf-

ficient to invoke the action of that court in behalf of a minority of stockholders was a matter purely of local practice which it was for that court to determine for itself, and no other court can review or set aside its action. There is no question of jurisdiction. The Supreme Court of Rhode Island was a court with full equity jurisdiction over the subject matter presented by the bill, namely, relief in behalf of a minority of the stockholders of a corporation. What averments are or are not necessary to sustain such a bill is a question purely of local practice and pleading, to be determined by each particular court for itself.

Peck *v.* Jenness, 7 How. 612, 625.
Cooper *v.* Reynolds, 10 Wall. 316.

5. The allegation, added by amendment, that the Credit Mobilier was a foreign corporation, and therefore that the Supreme Court of Rhode Island had no jurisdiction, is of no weight.

(*a*) To what extent a court will entertain a suit which may or may not indirectly affect a foreign corporation is a question solely for such court to determine.

(*b*) In this suit the Credit Mobilier voluntarily appeared by counsel, and *submitted to the jurisdiction of the court, and made no objection thereto.* (Record in No. 343, page 34.) It is not therefore open to Griswold to suggest such want of jurisdiction.

(*c*) The bill in the Rhode Island Supreme Court was not a bill asking or calling upon the Court to administer the affairs of a foreign corporation; it was simply a suit in behalf of the stockholders to recover from a defaulting stockholder and director a large sum; and such suit is maintainable wherever such defaulter may be found. If the objection presented by the amendment is worth anything, it must go

to the extent of claiming that no suit could be maintained against Durant unless he had chosen to go to Pennsylvania, the *locus* of the Credit Mobilier Company.

6. Another and conclusive answer to the whole bill is that the objection of want of jurisdiction in the Supreme Court of Rhode Island is not open to the defendant. He obtained the release of Durant from the writ of *ne exeat* by agreeing (to the extent of the penalty of the bond) to pay such decree as that Court might render in that specific suit. Durant's discharge from arrest was sufficient consideration for that promise, which was also under seal. This estoppel is all the more just and conclusive because the objection now raised to the jurisdiction does not depend upon any extraneous effects, but is based entirely upon criticisms of the bill, and therefore the alleged objection was one which was known, or ought to have been known, and is presumed to have been known, by this complainant when he entered into this obligation.

Jessup *v.* Hill, 7 Paige, 95.
Griwold, Petnr., 13 R. I. 125.

The bill therefore should be dismissed.

ELIAS MERWIN,
of Counsel with Respondents.

Daniel Maddox

Office Supreme Court U. S.
FILED.
APR 11 1891
JAMES. H. McKENNEY.
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 52.

JOHN N. A. GRISWOLD, APPELLANT,

vs.

ROWLAND G. HAZARD AND OTHERS.

Referring to briefs in No. 50, the undersigned explains that the bill in this case, which was dismissed by the court below upon demurrer, was filed to cancel the bond given by Durant and enjoin its prosecution at law on the ground that the suit in the supreme court of Rhode Island in which the *ne exeat* was issued was without jurisdiction; *first*, because the court was without jurisdiction over the subject-matter; and *second*, because it did not appear in the bill in that suit that any effort had been made by the complainant therein, who filed the bill as a *stockholder*, to procure the corporation to institute a suit.

As to the first of these grounds, it has seemed to the undersigned that the point was fully available in the suit at law on the bond (No. 53), and he has there argued it. As to the second ground, it has seemed to him that it was an assertion only of *error* in the jndgment of the supreme court of Rhode Island, and not sufficient as the foundation of an appeal to equity for relief.

But if for any reason the Court should be of opinion that this suit may have been well conceived, he asks that the appellant may have the benefit of that view.

JAMES C. CARTER,
Of Counsel for Appellant.